

EXHIBIT E27

00:00:59

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
The Honorable Rex M. Burlison, Judge

00:00:59

00:00:59

00:00:59

00:00:59

GAIL LUCILLE INGHAM, ET AL.,)

00:00:59

Plaintiffs,)

00:00:59

vs.) Cause No. 1522-CC10417-01

00:00:59

JOHNSON & JOHNSON, ET AL.,)

00:00:59

Defendants.)

00:00:59

00:00:59

00:00:59

00:00:59

00:00:59

TRIAL TRANSCRIPT
Volume 7

00:00:59

00:00:59

June 8, 2018

00:00:59

00:00:59

00:00:59

00:00:59

JENNIFER A. DUNN, RPR, CCR #485

00:00:59

OFFICIAL COURT REPORTER

00:00:59

CITY OF ST. LOUIS CIRCUIT COURT

00:00:59

TWENTY-SECOND JUDICIAL CIRCUIT

00:00:59

jdunncourts@yahoo.com

00:00:59

A P P E A R A N C E S

00:00:59

00:00:59

FOR THE PLAINTIFF GAIL INGHAM, et al.:

00:00:00

00:00:00

THE HOLLAND LAW FIRM

00:00:00

Mr. Eric Holland

00:00:00

Mr. Patrick Dowd

00:00:00

Mr. R. Seth Crompton

00:00:00

300 N. Tucker Blvd. #801

00:00:00

St. Louis, MO 63101

00:00:00

00:00:00

THE LANIER LAW FIRM, P.C.

00:00:00

Mr. W. Mark Lanier

00:00:00

Mr. Lee Cirsch

00:00:00

Ms. Rachel Lanier

00:00:00

Ms. Monica Cooper

00:00:00

00:00:00

THE LANIER LAW FIRM, P.C.

6810 FM 1960 West

00:00:00

Houston, TX 77069

00:00:00

00:00:00

FOR THE DEFENDANT JOHNSON & JOHNSON and JOHNSON &

00:00:00

JOHNSON CONSUMER COMPANIES, INC.:

00:00:00

ORRICK, HERRINGTON & SUTCLIFFE LLP

00:00:00

Mr. Peter A. Bicks

00:00:00

Ms. Lisa T. Simpson

00:00:00

Mr. Morton Donald Dubin II

00:00:00

Ms. Nina Trovato

00:00:00

Ms. Alyssa Barnard

00:00:00

Ms. Anne Malik

00:00:00

Ms. Shasha Zou

00:00:00

Ms. Shaila Diwan

00:00:00

00:00:00

Mr. Matt Bush

51 West 52nd Street

00:00:00

New York, NY 10019-6142

00:00:00

00:00:00

HEPLER BROOM LLC

00:00:00

Mr. Thomas J. Magee

00:00:00

00:00:00

Ms. Beth A. Bauer

211 N. Broadway, Suite 2700

00:00:00

St. Louis, MO 63102

00:00:00

00:00:01

SHOOK HARDY & BACON

00:00:01

00:00:01

Mr. Mark Hegarty

2555 Grand Boulevard

00:00:01

Kansas City, MO 64108

00:00:01

Page 1289

12:16:24 1 standard at some point in its process, you see where it's

12:16:28 2 talking about CTFA J4-1, TM7019, also separately had a

12:16:37 3 protocol to do TEM analysis on biweekly composites, right?

12:16:42 4 A Yes, sir.

12:16:43 5 Q So it would be completely unfair of Mr. Lanier to

12:16:47 6 suggest that somehow that Johnson & Johnson method for

12:16:51 7 testing its talc was to say yes -- I don't even know how to

12:16:58 8 write yes or no these days -- yes, no, XRD, and then decide,

12:17:02 9 well, let's stop there, because that wasn't the Johnson &

12:17:04 10 Johnson testing method?

12:17:06 11 A Well, it's a little bit more complicated than

12:17:09 12 that. There's a lot of XRD's stopped, didn't go on to PLM

12:17:14 13 or TEM. Yes, you did TEM at some point, but a lot of the

12:17:18 14 industries were just using XRD and stopping at that.

12:17:22 15 Q Right. A lot of others in the industry, including

12:17:25 16 companies like Scotts that you were defending for. They had

12:17:29 17 a protocol where you would stop at XRD, but Johnson &

12:17:32 18 Johnson did not?

12:17:34 19 A That's not quite right.

12:17:36 20 Q Okay. We'll hear from somebody from the company

12:17:39 21 and we can talk about it then.

12:17:41 22 A Okay.

12:17:41 23 Q All right. Next stop. You were shown this

12:17:54 24 document. It was a Johnson & Johnson memo, it's marked as

12:18:00 25 Plaintiffs' 08382. And, in particular, you were -- your

Page 1290

12:18:08 1 attention was drawn to this statement. Blow that up.

12:18:16 2 Note that talc or talc fragments cannot be part of

12:18:20 3 the above definitions and that massive forms of tremolite

12:18:23 4 and actinolite, which are in trace amounts in some

12:18:29 5 high-grade talcs, will also be out of the document. And I

12:18:33 6 think Mr. Lanier's point was, isn't this exactly what you're

12:18:38 7 finding. Is it what you're finding or not?

12:18:41 8 A Exactly finding.

12:18:42 9 Q Is that what you're finding?

12:18:44 10 A We're finding actinolite and tremolite asbestos in

12:18:47 11 trace amount, yes.

12:18:48 12 Q I'm sorry, you changed the words. I asked are you

12:18:51 13 finding massive forms of tremolite and actinolite in trace

12:18:56 14 amounts, is that what you're finding?

12:18:59 15 A We're finding asbestos fibers in bundles of

12:19:03 16 tremolite and actinolite in trace amounts.

12:19:05 17 Q You mentioned nerd terms, so let me talk about

12:19:08 18 another nerd term, and you know that's why you're not

12:19:11 19 answering my question directly, right, sir?

12:19:14 20 A No, that's not fair. Massive forms mean -- can be

12:19:18 21 large bundles. That's not fair.

12:19:20 22 Q Yeah. So the fact is this term "massive forms" is

12:19:27 23 a nerd term for the non-asbestos types of tremolite and

12:19:32 24 actinolite, right?

12:19:33 25 A I don't agree, no.

Page 1291

12:19:34 1 Q We'll talk to a geologist about what massive forms

12:19:38 2 of those amphiboles means. Thank you. You talked a little

12:19:46 3 bit about how in your view the document that somehow you

12:19:50 4 were proud of writing a bit ago now was a political

12:19:54 5 compromise document, this ASTM standard, but the same thing,

12:20:02 6 this same concept about what asbestos is, the difference

12:20:06 7 between mineral fragments and cleavage fragments and all of

12:20:10 8 that, that's also in IARC, right?

12:20:16 9 A In one of the parts of that, yes. And let's be

12:20:19 10 clear. I'm very proud of that document. It's just

12:20:22 11 political reality. I worked hundreds of hours in getting

12:20:28 12 that through. I'm still very proud of that.

12:20:31 13 Q And we also looked -- we also looked at a bunch of

12:20:47 14 definitions, I'm not going to go back over them with you,

12:20:50 15 but you remember MSHA, OSHA, EPA, AHERA, and a number of

12:20:55 16 others that include this idea of asbestos being asbestiform,

12:20:58 17 correct?

12:20:58 18 A It includes, yes, kind of. Again, we can debate

12:21:02 19 it some more, but it's apples and oranges with what you're

12:21:06 20 suggesting.

12:21:07 21 Q And we're going to talk about later what you found

12:21:10 22 fits these definitions or not. But let me ask you about

12:21:12 23 this challenge that I made for you that Mr. Lanier said you

12:21:16 24 answered. So let's look at what the actual thing I asked

12:21:22 25 you was. I said, let's look ahead. Can you point me to

Page 1292

12:21:36 1 anything, because I'll look it up overnight, in the

12:21:39 2 scientific and medical literature says that whenever you're

12:21:43 3 going to find non-asbestiform tremolite, you're also going

12:21:46 4 to find asbestos in that rock. And you said I didn't know,

12:21:50 5 I'll look at it overnight with you, right?

12:21:52 6 A Yes, sir.

12:21:53 7 Q And you not only had your resources, but also the

12:21:56 8 Lanier Law Firm resources overnight, correct?

12:21:59 9 A Correct.

12:22:00 10 Q And your response today was to talk about some

12:22:09 11 e-mail from 2008, from a company, Imerys, between somebody

12:22:20 12 who's titled a regulatory affairs manager and a guy who says

12:22:28 13 I am not a mineralogist. And that's what you brought today

12:22:33 14 in response to my request. Correct?

12:22:36 15 A That is correct.

12:22:37 16 Q So when I asked you if there's anything in the

12:22:43 17 scientific and medical literature, now, I assume that you're

12:22:47 18 not telling me that this e-mail is published in the

12:22:50 19 scientific and medical literature, correct?

12:22:53 20 A No, I actually think it's better. Here's the

12:22:57 21 person that works at this mine. He's the one saying it is

12:23:02 22 what it is. To me it's like sandlot baseball when your own

12:23:06 23 side says you're out nobody argues. This is somebody in the

12:23:09 24 mine, so I think it's very important.

12:23:12 25 Q In the mine?

Page 1293

12:23:14 1 A Well --

12:23:15 2 Q This mine talks about Death Valley, California.

12:23:20 3 Was Johnson & Johnson buying tale from Death Valley

12:23:22 4 California in 2008?

12:23:24 5 A Not 2008.

12:23:28 6 Q But the answer is overnight, no, you did not find

12:23:34 7 anything in the scientific and medical literature about this

12:23:36 8 point, correct?

12:23:39 9 A For the reasons I stated, you're correct.

12:23:42 10 Q All right. Dr. Pooley, now, first of all,

12:23:57 11 historically when we're talking about concentration methods,

12:24:03 12 I want to put this in context because a lot of the

12:24:06 13 discussion historically about concentration methods was ways

12:24:10 14 to try to make these two methods work better, right, XRD and

12:24:17 15 PLM?

12:24:18 16 A Yes.

12:24:19 17 Q So, for example, Pooley is talking about a way to

12:24:22 18 try to make XRD better. And Blount, and I think also

12:24:27 19 Colorado School of Mines, is talking about a way to make --

12:24:30 20 also talking about ways to make PLM better?

12:24:36 21 A I believe so, yes.

12:24:37 22 Q And part of the reason is that TEM is slower, more

12:24:41 23 expensive, harder to find people to do it, right, at the

12:24:44 24 time certainly?

12:24:46 25 A Well, at certain times, yes, unless you have a lab

Page 1294

12:24:49 1 that does it or you have your own. But I think the

12:24:52 2 concentration method goes to more than that. It makes it

12:24:56 3 more sensitive. It's making it more sensitive for XRD,

12:25:00 4 making it for sensitive for PLM, and it makes it more

12:25:03 5 sensitive for TEM. There's no reason you can use it for one

12:25:07 6 and not the other, in my opinion.

12:25:08 7 Q I want to talk about the proposed specs for

12:25:11 8 analyzing tale for asbestos. I really didn't think we had

12:25:15 9 much of a disagreement about this, that this is talking

12:25:21 10 about the results and use of XRD, x-ray diffraction, right,

12:25:28 11 XRD, XRD method, XRD method?

12:25:33 12 A Yes.

12:25:33 13 Q Okay.

12:25:35 14 A For right there.

12:25:36 15 Q And I didn't say that the word "asbestos" isn't in

12:25:40 16 the document. Because XRD does have a role and has

12:25:45 17 historically had a role as a method for analyzing tale for

12:25:49 18 asbestos, right?

12:25:50 19 A Correct.

12:25:50 20 Q But that doesn't change the fact that XRD analysis

12:25:54 21 doesn't distinguish asbestiforms of tremolite from

12:25:58 22 non-asbestiforms, right?

12:26:00 23 A I agree.

12:26:06 24 Q Getting close. You talked about Scotts. The fact

12:26:18 25 that Scotts was vermiculite in a turf, doesn't change the

Page 1295

12:26:25 1 fact that when you were working on this client engagement,

12:26:30 2 you said that the lab Johnson & Johnson used was literally

12:26:33 3 the best lab in the country, and you relied on both RJ Lee

12:26:36 4 and McCrone data as independent labs to support your

12:26:41 5 opinions, correct?

12:26:43 6 A That is correct. As I stated yesterday, and I

12:26:45 7 think -- have I been here three days, the day before?

12:26:48 8 Q Okay. And then I want to look back one more time

12:26:57 9 at this issue of your data. And what data you had there and

12:27:04 10 what data was hidden. And you're not going to disagree with

12:27:22 11 me that, first of all, in your Scotts Report, you're not

12:27:38 12 going to disagree with me in your Scotts Report you did

12:27:41 13 report your detection limit, it was important enough for you

12:27:44 14 to put your detection limit in your Scotts Report?

12:27:46 15 A Based on one fiber, that's correct.

12:27:52 16 Q Based on one fiber?

12:27:56 17 A I believe.

12:27:56 18 Q And it's very easy after somebody shows you

12:28:00 19 something like that to show this kind of data is not

12:28:02 20 important, it doesn't matter who cares that I didn't put it

12:28:08 21 in there.

12:28:09 22 But when I asked you about it before you knew that

12:28:14 23 was coming yesterday, I asked you when evaluating any

12:28:23 24 analytical method like this, it's important to know what

12:28:26 25 your analytical sensitivity is and you told me yes, sir.

Page 1296

12:28:31 1 And I asked you, it's important to know what your detection

12:28:34 2 limit is, and you told me that's correct, right?

12:28:39 3 A That's what I stated, I still stick by that.

12:28:42 4 Q Okay. If we look back at C2019, page 193. And we

12:28:57 5 can click the box again. Those two things I just -- you

12:29:03 6 just agreed with me were important, analytical sensitivity,

12:29:09 7 detection limit, those are the things that were whited out

12:29:14 8 routinely in your report with a white box over them before

12:29:18 9 they were sent to us?

12:29:20 10 A Well --

12:29:21 11 Q Correct?

12:29:21 12 A Before they were sent to everybody, yes, it was --

12:29:24 13 there was an edit on it and the analytical sensitivity is

12:29:27 14 one fiber because of the spreadsheet, yes, that happened.

12:29:33 15 Q And I believe Mr. Lanier suggested, well, you

12:29:37 16 could have asked him at his deposition. Should my first

12:29:40 17 question to you in future depositions be are you hiding

12:29:43 18 anything that you haven't shown me yet?

12:29:46 19 A Sure, if you want.

12:29:47 20 Q Okay. I'll remember that. Finally, let's go back

12:29:52 21 to L39. This ad. Because I think you also made the

12:30:06 22 implication that unlike RJ Lee, you weren't tied to

12:30:11 23 industry, right, you said that?

12:30:12 24 A Yes, sir.

12:30:13 25 Q But you are tied to an industry, you're tied to

12:30:16 1 the litigation industry, that's why you've testified

12:30:20 2 thousands of times, that's why your company has billed over

12:30:24 3 \$30 million to Plaintiffs' Counsel For testifying in cases.

12:30:29 4 You are a trial expert, correct?

12:30:37 5 A No, no, no, I guess since I'm here, no. Tied to

12:30:43 6 industry is when you go and lobby for them. I'm not going

12:30:46 7 to Congress and lobbying for Plaintiffs' attorneys or

12:30:50 8 defense attorneys or firms. This is part of what we do. We

12:30:56 9 fund analyses, but we're willing, if we do these analyses,

12:31:02 10 to come and defend them, that's what we do and others in my

12:31:06 11 lab.

12:31:08 12 MR. DUBIN: All right. Thanks a lot.

12:31:09 13 THE COURT: Anything further?

12:31:11 14 MR. LANIER: Please, your Honor.

12:31:11 15 FURTHER REDIRECT EXAMINATION

12:31:11 16 BY MR. LANIER:

12:31:12 17 Q You understand under the law that if I'm going to

12:31:14 18 represent somebody that's been hurt by asbestos, I have to

12:31:18 19 hire you or someone else who can testify in a courtroom?

12:31:20 20 A I would recommend it. I don't know if you have

12:31:23 21 to.

12:31:24 22 Q I can't win a case without putting it on the

12:31:26 23 record that there's asbestos in there, do you understand?

12:31:30 24 A That I understand.

12:31:30 25 Q So you fill a very important role. Are you

12:31:33 1 apologetic about that?

12:31:35 2 A No, but a lit overwhelmed when I think about it.

12:31:38 3 Q Do you change the science because of who hired

12:31:41 4 you?

12:31:42 5 A No.

12:31:43 6 Q Does the fact that I've hired you here, I've been

12:31:46 7 against you in other cases, does that change what is in a

12:31:53 8 bottle of Johnson & Johnson Baby Powder?

12:31:56 9 A Not at all.

12:31:57 10 Q Do all of a sudden asbestos fibers start finding

12:32:02 11 their way in this bottle because you've testified before?

12:32:06 12 A That would be impossible, no.

12:32:10 13 Q Does the things that are hidden on your report,

12:32:15 14 this is -- this is, let's make, because this gets typed up

12:32:20 15 and he's going to use this again. Let's make sure it's real

12:32:23 16 clear on the record.

12:32:24 17 Tell this jury what happened. Tell them how it

12:32:27 18 happened, and then I'm going to ask what difference does

12:32:30 19 it -- he finished right as I was writing this -- make.

12:32:39 20 What happened. How did it happen. Tell the

12:32:41 21 jury -- I don't even understand why we're fussing over this,

12:32:47 22 but tell the jury, please.

12:32:49 23 A It's just an Excel spreadsheet for the analysis,

12:32:52 24 and part of these protocols, as Mr. Dubin pointed out in the

12:32:56 25 ASTM, it says here's your detection limit. So it's just

12:33:01 1 automatically in there. It's different here because we're

12:33:04 2 dealing with not a commercial asbestos product. We're

12:33:09 3 dealing with something that's very rare to find. So your

12:33:12 4 detection limit and your analytical sensitivity is, in my

12:33:16 5 opinion, the same. Finding one fiber.

12:33:18 6 So it just automatically put it in. So I said to

12:33:22 7 remove it because it doesn't portray what I'm testifying

12:33:27 8 about. But it's simple to do, you just say, okay, three

12:33:31 9 fibers.

12:33:32 10 Q If I reissue the report to them over the weekend

12:33:35 11 and we take that white box off and they get the entire, does

12:33:39 12 it change anything you have said at all?

12:33:41 13 A Nothing.

12:33:42 14 Q Does it change the asbestos that's in their

12:33:44 15 bottle?

12:33:44 16 A No, sir.

12:33:45 17 Q Does it change the fact you've got to test it

12:33:48 18 right to find it?

12:33:50 19 A No, sir.

12:33:53 20 Q And I'm sure -- does this mean that -- well, I'll

12:34:01 21 cross their experts on that one, please.

12:34:07 22 Next subject. Testing the mines. He said, well,

12:34:13 23 you can just test the mines?

12:34:17 24 A We did test the mines.

12:34:18 25 Q Tell the jury about that.

12:34:19 1 A We didn't go to the mine.

12:34:21 2 Q Why not?

12:34:25 3 A Nobody said you could go to somebody else's mine

12:34:28 4 in this type of environment.

12:34:31 5 Q Did you know we actually requested it and we're

12:34:33 6 not allowed to?

12:34:34 7 A I'm not surprised. So if you think about how do

12:34:38 8 we test the mines. We're testing the samples that came from

12:34:41 9 the mine. When we look at these ones before World War II

12:34:47 10 where they went off to California, and we test something

12:34:50 11 from 1933 that came from the Italian mine, just as Mr. Dubin

12:34:55 12 says, nothing changes. That covers what happened when

12:34:58 13 you're using the same mine for your 1955 bottles. So the

12:35:02 14 same mine for your 1966, excuse me, '66 bottles.

12:35:07 15 Just going there today you can figure out what's

12:35:11 16 in the mine works the same way. You can't have it both

12:35:13 17 ways. You can't say, well, you're analyzing it today for

12:35:17 18 everything you couldn't find in the past. While I'm

12:35:21 19 analyzing what's happened in the past for times outside of

12:35:24 20 the bottles I have. Same mine, same concept.

12:35:27 21 Vermont mine. I haven't tested all the bottles

12:35:31 22 from all the times in Vermont, but if I test bottles that

12:35:35 23 have asbestos in it from Vermont, that's an indication of

12:35:38 24 what's in that Vermont mine. So we are actually testing the

12:35:41 25 mine, but we're testing the final product from the mine.

12:57:23 1 CERTIFICATE
12:57:23 2 I, Jennifer A. Dunn, Registered Professional
12:57:23 3 Reporter and Certified Court Reporter, do hereby certify
12:57:23 4 that I am an official court reporter for the Circuit Court
12:57:23 5 of the City of St. Louis; that on June 8, 2018, I was
12:57:23 6 present and reported all the proceedings had in the case of
12:57:23 7 GAIL INGHAM, ET AL., Plaintiffs, vs. JOHNSON & JOHNSON,
12:57:23 8 Defendant, Cause No. 1522-CC10417-01.
12:57:23 9 I further certify that the foregoing pages
12:57:23 10 contain a true and accurate reproduction of the proceedings.
12:57:23 11
12:57:23 12
12:57:23 13
12:57:23 14
12:57:23 15
12:57:23 16 "/s/JENNIFER A. DUNN, RPR, CCR #485"
17
18
19
20
21
22
23
24
25